

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 393

(By Senators Cole (Mr. President)
and Kessler,
By Request of the Executive)

[Originating in the Committee
on the Judiciary;
reported February 24, 2015.]

A BILL to amend and reenact §49-1-206 of the Code of West Virginia, 1931, as amended; to amend and reenact §49-2-907, §49-2-1002 and §49-2-1003 of said code; to amend said code by adding thereto two new sections, designated §49-2-912 and §49-2-913; to amend and reenact §49-4-403, §49-4-406, §49-4-409, §49-4-702, §49-4-711, §49-4-712, §49-4-714, §49-4-718, and §49-4-719 of said code; to amend said code by adding thereto

[COM. SUB. FOR S. B. NO. 393]

four new sections, designated §49-4-413, §49-4-702a, §49-4-724, and §49-4-725; to amend and reenact §49-5-103 of said code; and to amend said code by adding thereto a new section, designated §49-5-106, all relating generally to juvenile justice reform; defining terms; providing that juveniles may only be transferred to juvenile diagnostic centers under certain circumstances; requiring dedication of a percentage of funding for community services to evidence-based practices; establishing criteria for transition to juvenile's home setting following out-of-home placement; providing for cooperative agreements solely between the Department of Health and Human Resources and private agencies to house status offenders; establishing community-based youth reporting centers; establishing Juvenile Justice Reform Oversight Committee; providing for multidisciplinary team meetings; establishing members of multidisciplinary team; providing that

[COM. SUB. FOR S. B. NO. 393]

multidisciplinary team shall advise court on treatment and rehabilitation plans for juvenile; providing that multidisciplinary team shall monitor juvenile's progress; requiring aftercare plan for all juvenile out-of-home placements; providing prepetition diversion process for juveniles who commit truancy offenses, status offenses and nonviolent misdemeanor offenses, effective July 1, 2016; providing requirements for prepetition diversion programs; authorizing probation officers to participate in prepetition diversion programs; allowing truancy or treatment programs existing in a judicial circuit as of January 1, 2015, to continue to operate notwithstanding new requirements; establishing prepetition review team; requiring court to consider results of risk and needs assessment of the juvenile prior to dispositional proceedings; requiring inclusion of accepted treatment and rehabilitation plan for juveniles in certain findings of fact; providing that a juvenile adjudicated as a status

[COM. SUB. FOR S. B. NO. 393]

offender may not be placed in out-of-home placement in certain circumstances; prohibiting placement of a juvenile adjudicated as a status offender within a Division of Juvenile Services facility on or after January 1, 2016; providing that a juvenile adjudicated delinquent for a nonviolent misdemeanor offense may not be placed in out-of-home placement in certain circumstances; providing that time served by a juvenile in a detention center pending adjudication, disposition or transfer be taken into account during sentencing; requiring court to issue certain findings of fact if a juvenile is to be placed in a residential facility; providing for standardized screener to conduct an evaluation of the juvenile in certain circumstances; permitting court to include reasonable and relevant orders to parents in its disposition order for a juvenile; establishing review and modification procedures for probation dispositional orders; authorizing Supreme Court of Appeals to develop

[COM. SUB. FOR S. B. NO. 393]

community-based juvenile probation sanctions and incentives; establishing individualized case planning; providing that a juvenile may be referred to a truancy diversion specialist prior to filing of petition; providing for prepetition counsel and advice; providing for adoption of risk and needs assessment and validation; authorizing creation of restorative justice programs; providing for disclosure of juvenile records to Department of Health and Human Resources and Division of Juvenile Services for case planning; providing for data collection related to juvenile justice outcomes and disproportional minority contact; and making technical revisions.

Be it enacted by the Legislature of West Virginia:

That §49-1-206 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §49-2-907, §49-2-1002 and §49-2-1003 of said code be amended and reenacted; that said code be amended by adding thereto two new sections,

[COM. SUB. FOR S. B. NO. 393]

designated §49-2-912 and §49-2-913; that §49-4-403, §49-4-406, §49-4-409, §49-4-702, §49-4-711, §49-4-712, §49-4-714, §49-4-718 and §49-4-719 of said code be amended and reenacted; that said code be amended by adding thereto four new sections, designated §49-4-413, §49-4-702a, §49-4-724 and §49-4-725; that §49-5-103 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §49-5-106, all to read as follows:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§49-1-206. Definitions related, but not limited, to child advocacy, care, residential and treatment programs.

1 When used in this chapter, terms defined in this section
2 have the meanings ascribed to them that relate to, but are not
3 limited to, child advocacy, care, residential and treatment
4 programs, except in those instances where a different meaning
5 is provided or the context in which the word is used clearly
6 indicates that a different meaning is intended.

[COM. SUB. FOR S. B. NO. 393]

1 “Child advocacy center (CAC)” means a
2 community-based organization that is a member in good
3 standing with the West Virginia Child Abuse Network, Inc., as
4 set forth in section one hundred one, article three of this chapter.

5 “Child care” means responsibilities assumed and services
6 performed in relation to a child’s physical, emotional,
7 psychological, social and personal needs and the consideration
8 of the child’s rights and entitlements, but does not include secure
9 detention or incarceration under the jurisdiction of the Division
10 of Juvenile Services pursuant to part nine, article two of this
11 chapter. It includes the provision of child care services or
12 residential services.

13 “Child care center” means a facility maintained by the
14 state or any county or municipality thereof, or any agency or
15 facility maintained by an individual, firm, corporation,
16 association or organization, public or private for the care of
17 thirteen or more children for child care services in any setting,
18 if the facility is open for more than thirty days per year per child.

[COM. SUB. FOR S. B. NO. 393]

1 “Child care services” means direct care and protection of
2 children during a portion of a twenty-four hour day outside of
3 the child’s own home which provides experiences to children
4 that foster their healthy development and education.

5 “Child placing agency” means a child welfare agency
6 organized for the purpose of placing children in private family
7 homes for foster care or for adoption. The function of a
8 child-placing agency may include the investigation and
9 certification of foster family homes and foster family group
10 homes as provided in this chapter. The function of a child
11 placing agency may also include the supervision of children who
12 are sixteen or seventeen years old and living in unlicensed
13 residences.

14 “Child welfare agency” means any agency or facility
15 maintained by the state or any county or municipality thereof, or
16 any agency or facility maintained by an individual, firm,
17 corporation, association or organization, public or private, to
18 receive children for care and maintenance or for placement in

[COM. SUB. FOR S. B. NO. 393]

1 residential care facilities, including, without limitation, private
2 homes or any facility that provides care for unmarried mothers
3 and their children. A child welfare agency does not include
4 juvenile detention facilities or juvenile correctional facilities
5 operated by or under contract with the Division of Juvenile
6 Services, pursuant to part nine, article two of this chapter, nor
7 any other facility operated by that division for the secure housing
8 or holding of juveniles committed to its custody.

9 “Community based” means a facility, program or service
10 located near the child’s home or family and involving
11 community participation in planning, operation and evaluation
12 and which may include, but is not limited to, medical,
13 educational, vocational, social and psychological guidance,
14 training, special education, counseling, ~~alcoholism~~ substance
15 abuse and any other treatment ~~and other or~~ rehabilitation
16 services.

17 “Community-based juvenile probation sanctions” means
18 any of a continuum of nonresidential accountability measures,

[COM. SUB. FOR S. B. NO. 393]

1 programs and sanctions in response to a technical violation of
2 probation, as part of a system of community-based juvenile
3 probation sanctions and incentives, that may include, but are not
4 limited to:

5 _____ (A) Electronic monitoring;

6 _____ (B) Drug and alcohol screening, testing or monitoring;

7 _____ (C) Youth reporting centers;

8 _____ (D) Reporting and supervision requirements;

9 _____ (E) Community service; and

10 _____ (F) Rehabilitative interventions such as family
11 counseling, substance abuse treatment, restorative justice
12 programs and behavioral or mental health treatment.

13 _____ “Community services” means nonresidential prevention
14 or intervention services or programs that are intended to reduce
15 delinquency and future court involvement.

16 _____ “Evidence-based practices” means policies, procedures,
17 programs and practices demonstrated by research to reliably
18 produce reductions in the likelihood of reoffending.

[COM. SUB. FOR S. B. NO. 393]

1 “Facility” means a place or residence, including
2 personnel, structures, grounds and equipment used for the care
3 of a child or children on a residential or other basis for any
4 number of hours a day in any shelter or structure maintained for
5 that purpose. Facility does not include any juvenile detention
6 facility or juvenile correctional facility operated by or under
7 contract with the Division of Juvenile Services for the secure
8 housing or holding of juveniles committed to its custody.

9 “Family child care facility” means any facility which is
10 used to provide nonresidential child care services for
11 compensation for seven to twelve children, including children
12 who are living in the household, who are under six years of age.
13 No more than four of the total number of children may be under
14 twenty-four months of age. A facility may be in a provider’s
15 residence or a separate building.

16 “Family child care home” means a facility which is used
17 to provide nonresidential child care services for compensation in
18 a provider’s residence. The provider may care for four to six

[COM. SUB. FOR S. B. NO. 393]

1 children, at one time including children who are living in the
2 household, who are under six years of age. No more than two of
3 the total number of children may be under twenty-four months
4 of age.

5 “Family resource network” means:

6 (A) A local community organization charged with service
7 coordination, needs and resource assessment, planning,
8 community mobilization and evaluation, and which has met the
9 following criteria:

10 (i) Agreeing to a single governing entity;

11 (ii) Agreeing to engage in activities to improve service
12 systems for children and families within the community;

13 (iii) Addressing a geographic area of a county or two or
14 more contiguous counties;

15 (iv) Having nonproviders, which include family
16 representatives and other members who are not employees of
17 publicly funded agencies, as the majority of the members of the
18 governing body, and having family representatives as the

[COM. SUB. FOR S. B. NO. 393]

1 majority of the nonproviders;

2 (v) Having representatives of local service agencies,
3 including, but not limited to, the public health department, the
4 behavioral health center, the local health and human resources
5 agency and the county school district, on the governing body;
6 and

7 (vi) Accepting principles consistent with the cabinet's
8 mission as part of its philosophy.

9 (B) A family resource network may not provide direct
10 services, which means to provide programs or services directly
11 to children and families.

12 "Family support", for the purposes of part six, article two
13 of this chapter, means goods and services needed by families to
14 care for their family members with developmental disabilities
15 and to enjoy a quality of life comparable to other community
16 members.

17 "Family support program" means a coordinated system
18 of family support services administered by the Department of

[COM. SUB. FOR S. B. NO. 393]

1 Health and Human Resources through contracts with behavioral
2 health agencies throughout the state.

3 “Foster family home” means a private residence which
4 is used for the care on a residential basis of no more than five
5 children who are unrelated by blood, marriage or adoption to any
6 adult member of the household.

7 “Health care and treatment” means:

8 (A) Developmental screening;

9 (B) Mental health screening;

10 (C) Mental health treatment;

11 (D) Ordinary and necessary medical and dental
12 examination and treatment;

13 (E) Preventive care including ordinary immunizations,
14 tuberculin testing and well-child care; and

15 (F) Nonemergency diagnosis and treatment. However,
16 nonemergency diagnosis and treatment does not include an
17 abortion.

18 “Home-based family preservation services” means

[COM. SUB. FOR S. B. NO. 393]

1 services dispensed by the Division of Human Services or by
2 another person, association or group who has contracted with
3 that division to dispense services when those services are
4 intended to stabilize and maintain the natural or surrogate family
5 in order to prevent the placement of children in substitute care.

6 There are two types of home-based family preservation services
7 and they are as follows:

8 (A) Intensive, short-term intervention of four to six
9 weeks; and

10 (B) Home-based, longer-term after care following
11 intensive intervention.

12 “Informal family child care” means a home that is used
13 to provide nonresidential child care services for compensation
14 for three or fewer children, including children who are living in
15 the household, who are under six years of age. Care is given in
16 the provider’s own home to at least one child who is not related
17 to the caregiver.

18 “Nonsecure facility” means any public or private

[COM. SUB. FOR S. B. NO. 393]

1 residential facility not characterized by construction fixtures
2 designed to physically restrict the movements and activities of
3 individuals held in lawful custody in that facility and which
4 provides its residents access to the surrounding community with
5 supervision.

6 “Nonviolent misdemeanor offense” means a
7 misdemeanor offense that does not include any of the following:

8 (A) An act resulting in bodily injury or death;

9 (B) The use of a weapon in the commission of the
10 offense;

11 (C) A domestic abuse offense involving a significant or
12 likely risk of harm to a family member or household member;

13 (D) A criminal sexual conduct offense; or

14 (E) Any offense for driving under the influence of
15 alcohol or drugs.

16 “Out-of-home placement” means a post-adjudication
17 placement in a foster family home, group home, nonsecure
18 facility, emergency shelter, hospital, psychiatric residential

[COM. SUB. FOR S. B. NO. 393]

1 treatment facility, staff-secure facility, hardware secure facility,
2 detention facility or other residential placement other than
3 placement in the home of a parent, custodian or guardian.

4 _____ “Out-of-school time” means a child care service which
5 offers activities to children before and after school, on school
6 holidays, when school is closed due to emergencies and on
7 school calendar days set aside for teacher activities.

8 “Placement” means any temporary or permanent
9 placement of a child who is in the custody of the state in any
10 foster home, group home or other facility or residence.

11 “Pre-adjudicatory community supervision” means
12 supervision provided to a youth prior to adjudication, a period of
13 supervision up to one year for an alleged status or delinquency
14 offense.

15 “Regional family support council” means the council
16 established by the regional family support agency to carry out
17 the responsibilities specified in part six, article two of this
18 chapter.

[COM. SUB. FOR S. B. NO. 393]

1 “Relative family child care” means a home that provides
2 nonresidential child care services only to children related to the
3 caregiver. The caregiver is a grandparent, great grandparent,
4 aunt, uncle, great-aunt, great-uncle or adult sibling of the child
5 or children receiving care. Care is given in the provider’s home.

6 “Residential services” means child care which includes
7 the provision of nighttime shelter and the personal discipline and
8 supervision of a child by guardians, custodians or other persons
9 or entities on a continuing or temporary basis. It may include
10 care and or treatment for transitioning adults. Residential
11 services does not include or apply to any juvenile detention
12 facility or juvenile correctional facility operated by the Division
13 of Juvenile Services, created pursuant to this chapter, for the
14 secure housing or holding of juveniles committed to its custody.

15 “Risk and needs assessment” means a validated,
16 standardized actuarial tool which identifies specific risk factors
17 that increase the likelihood of reoffending and the factors that,
18 when properly addressed, can reduce the likelihood of

[COM. SUB. FOR S. B. NO. 393]

1 reoffending.

2 “Secure facility” means any public or private residential
3 facility which includes construction fixtures designed to
4 physically restrict the movements and activities of juveniles or
5 other individuals held in lawful custody in such facility.

6 “Staff-secure facility” means any public or private
7 residential facility characterized by staff restrictions of the
8 movements and activities of individuals held in lawful custody
9 in such facility and which limits its residents' access to the
10 surrounding community, but is not characterized by construction
11 fixtures designed to physically restrict the movements and
12 activities of residents;

13 “Standardized screener” means a brief, validated
14 nondiagnostic inventory or questionnaire designed to identify
15 juveniles in need of further assessment for medical, substance
16 abuse, emotional, psychological, behavioral, or educational
17 issues, or other conditions.

18 _____“State family support council” means the council

[COM. SUB. FOR S. B. NO. 393]

1 established by the Department of Health and Human Resources
2 pursuant to part six, article two of this chapter to carry out the
3 responsibilities specified in article two of this chapter.

4 “Time-limited reunification services” means individual,
5 group and family counseling, inpatient, residential or outpatient
6 substance abuse treatment services, mental health services,
7 assistance to address domestic violence, services designed to
8 provide temporary child care and therapeutic services for
9 families, including crisis nurseries and transportation to or from
10 those services, provided during fifteen of the most recent
11 twenty-two months a child or juvenile has been in foster care, as
12 determined by the earlier date of the first judicial finding that the
13 child is subjected to abuse or neglect, or the date which is sixty
14 days after the child or juvenile is removed from home.

15 “Technical violation” means an act that violates the terms
16 or conditions of probation or a court order that does not
17 constitute a new delinquent offense.

18 “Truancy diversion specialist” means a school-based

[COM. SUB. FOR S. B. NO. 393]

1 probation officer or truancy social worker within a school or
2 schools who, among other responsibilities, identifies truant and
3 the causes of the truant behavior, and assists in developing a plan
4 to reduce the truant behavior prior to court involvement.

5 **ARTICLE 2. STATE RESPONSIBILITIES FOR**
6 **CHILDREN.**

7 **§49-2-907. Examination, diagnosis classification and**
8 **treatment; period of custody.**

9 (a) As a part of the ~~dispositional proceeding~~ disposition
10 for a juvenile who has been adjudicated delinquent, and who has
11 been determined by a risk and needs assessment to be high risk
12 or who has committed an act or acts of violence. the court may,
13 upon its own motion or upon request of counsel, order the
14 juvenile to be delivered into the custody of the Director of the
15 Division of Juvenile Services, who shall cause the juvenile to be
16 transferred to a juvenile diagnostic center for a period not to
17 exceed ~~sixty~~ thirty days. During this period, the juvenile shall
18 undergo examination, diagnosis, classification and a complete

[COM. SUB. FOR S. B. NO. 393]

1 medical examination and shall at all times be kept apart from the
2 general juvenile inmate population in the director's custody.

3 (b) During the examination period established by
4 subsection (a) of this section, the director, or his or her designee,
5 shall convene and direct a multidisciplinary treatment team for
6 the juvenile which team ~~shall~~ will include the juvenile, if
7 appropriate, the juvenile's probation officer, the juvenile's ~~social~~
8 case worker, if any, the juvenile's custodial parent or parents, the
9 juvenile's guardian, attorneys representing the juvenile or the
10 parents, the guardian ad litem, if any, the prosecuting attorney
11 and an appropriate school official or representative. The team
12 may also include, where appropriate, a court-appointed special
13 advocate, a member of a child advocacy center and any other
14 person who may assist in providing recommendations for the
15 particular needs of the juvenile and the family.

16 (c) Not later than ~~sixty~~ thirty days after commitment
17 pursuant to this section the juvenile shall be remanded and
18 delivered to the custody of the director, an appropriate agency or

[COM. SUB. FOR S. B. NO. 393]

1 any other person that the court by its order directs. Within ten
2 days after the end of the examination, diagnosis and
3 classification, the Director of the Division of Juvenile Services
4 shall make or cause to be made a report to the court containing
5 the results, findings, conclusions and recommendations of the
6 multidisciplinary team with respect to that juvenile.

7 **§49-2-912. Youth reporting centers.**

8 (a) The Division of Juvenile Services shall operate
9 community-based youth reporting centers to provide services to
10 youth involved in the juvenile justice system as an alternative to
11 detention, corrections or out-of-home placement.

12 (b) The Division of Juvenile Services shall promulgate
13 guidelines, policies and procedures regarding referrals,
14 assessments, case management, services, education and
15 connection to services in the community.

16 (c) The Division of Juvenile Services shall collaborate
17 with county boards of education to provide education services to
18 certain youth referred to youth reporting centers, whenever

[COM. SUB. FOR S. B. NO. 393]

1 feasible.

2 (d) The Division of Juvenile Services may convene local
3 or regional advisory boards for youth reporting centers.

4 **§49-2-913. Juvenile Justice Reform Oversight Committee.**

5 _____(a) The Juvenile Justice Reform Oversight Committee is
6 hereby created to oversee the implementation of reform
7 measures intended to improve the state's juvenile justice system.

8 (b) The committee shall be comprised of seventeen
9 members, including the following individuals:

10 (1) The Governor, or his or her designee, who shall
11 preside as chair of the committee;

12 (2) Two members from the House of Delegates,
13 appointed by the Speaker of the House of Delegates;

14 (3) Two members from the Senate, appointed by the
15 President of the Senate;

16 (4) The Secretary of the Department of Health and
17 Human Resources, or his or her designee;

18 (5) The Director of the Division of Juvenile Services, or

[COM. SUB. FOR S. B. NO. 393]

1 his or her designee;

2 (6) The Superintendent of the State Board of Education,

3 or his or her designee;

4 (7) The Administrative Director of the Supreme Court of

5 Appeals, or his or her designee;

6 (8) The Director of the Division of Probation Services, or

7 his or her designee;

8 (9) Two circuit court judges, appointed by the Chief

9 Justice of the Supreme Court of Appeals;

10 (10) One community member juvenile justice

11 stakeholder, appointed by the Governor;

12 (11) One juvenile crime victim advocate, appointed by

13 the Governor;

14 (12) One member from the law-enforcement agency,

15 appointed by the Governor;

16 (13) One member from a county prosecuting attorney's

17 office, appointed by the Governor; and

18 (14) The Director of the Juvenile Justice Commission.

[COM. SUB. FOR S. B. NO. 393]

1 (c) The committee shall perform the following duties:

2 (1) Guide and evaluate the implementation of the
3 provisions adopted in the year 2015 relating to juvenile justice
4 reform;

5 (2) Obtain and review the juvenile recidivism and
6 program outcome data collected pursuant to section one hundred
7 six, article five of this chapter;

8 (3) Calculate any state expenditures that have been
9 avoided by reductions in the number of youth placed in
10 out-of-home placements by the Division of Juvenile Services or
11 the Department of Health and Human Resources as reported
12 under section one hundred six, article five of this chapter; and

13 (4) Institute a uniform process for developing and
14 reviewing performance measurement and outcome measures
15 through data analysis. The uniform process shall include:

16 (A) The performance and outcome measures for the
17 court, the Department of Health and Human Resources and the
18 Division of Juvenile Services; and

[COM. SUB. FOR S. B. NO. 393]

1 (B) The deadlines and format for the submission of the
2 performance and outcome measures; and

3 (5) Ensure system accountability and monitor the fidelity
4 of implementation efforts or programs;

5 (6) Study any additional topics relating to the continued
6 improvement of the juvenile justice system; and

7 (7) Issue an annual report to the Governor, the President
8 of the Senate, the Speaker of the House of Delegates and the
9 Chief Justice of the Supreme Court of Appeals of West Virginia
10 on or before November 30th of each year, starting in 2016,
11 which shall include:

12 (A) An assessment of the progress made in
13 implementation of juvenile justice reform efforts;

14 (B) A summary of the committee's efforts in fulfilling its
15 duties as set forth in this section; and

16 (C) An analysis of the recidivism data obtained by the
17 committee under this section;

18 (D) A summary of the averted costs calculated by the

[COM. SUB. FOR S. B. NO. 393]

1 committee under this section and a recommendation for any
2 reinvestment of the averted costs to fund services or programs to
3 expand West Virginia's continuum of alternatives for youth who
4 would otherwise be placed in out-of-home placement;

5 (E) Recommendations for continued improvements to the
6 juvenile justice system.

7 (d) The Division of Justice and Community Services
8 shall provide staff support for the committee. The committee
9 may request and receive copies of all data, reports, performance
10 measures and other evaluative material regarding juvenile justice
11 submitted from any agency, branch of government or political
12 subdivision to carry out its duties.

13 (e) The committee shall meet within ninety days after
14 appointment and shall thereafter meet at least quarterly, upon
15 notice by the chair. Eight members shall be considered a
16 quorum.

17 (f) After initial appointment, members appointed to the
18 committee by the Governor, the President of the Senate, the

[COM. SUB. FOR S. B. NO. 393]

1 Speaker of the House of Delegates or the Chief Justice of the
2 Supreme Court of Appeals, pursuant to subsection (b) of this
3 section, shall serve for a term of two years from his or her
4 appointment and shall be eligible for reappointment to that
5 position. All members appointed to the committee shall serve
6 until his or her successor has been duly appointed.

7 (g) The committee shall sunset on December 31, 2020,
8 unless reauthorized by the Legislature.

9 **§49-2-1002. Responsibilities of the Department of Health**
10 **and Human Resources and Division of Juvenile**
11 **Services of the Department of Military Affairs and**
12 **Public Safety; programs and services; rehabilitation;**
13 **cooperative agreements.**

14 (a) The Department of Health and Human Resources and
15 the Division of Juvenile Services of the Department of Military
16 Affairs and Public Safety shall establish programs and services
17 designed to prevent juvenile delinquency, to divert juveniles
18 from the juvenile justice system, to provide community-based

[COM. SUB. FOR S. B. NO. 393]

1 alternatives to juvenile detention and correctional facilities and
2 to encourage a diversity of alternatives within the child welfare
3 and juvenile justice system. The development, maintenance and
4 expansion of programs and services may include, but not be
5 limited to, the following:

6 (1) Community-based programs and services for the
7 prevention and treatment of juvenile delinquency through the
8 development of foster-care and shelter-care homes, group
9 homes, halfway houses, homemaker and home health services,
10 24-hour intake screening, volunteer and crisis home programs,
11 day treatment and any other designated community-based
12 diagnostic, treatment or rehabilitative service;

13 (2) Community-based programs and services to work
14 with parents and other family members to maintain and
15 strengthen the family unit so that the juvenile may be retained in
16 his or her home;

17 (3) Youth service bureaus and other community-based
18 programs to divert youth from the juvenile court or to support,

[COM. SUB. FOR S. B. NO. 393]

1 counsel or provide work and recreational opportunities for status
2 offenders, juvenile delinquents and other youth to help prevent
3 delinquency;

4 (4) Projects designed to develop and implement programs
5 stressing advocacy activities aimed at improving services for and
6 protecting rights of youth affected by the juvenile justice system;

7 (5) Educational programs or supportive services designed
8 to encourage status offenders, juvenile delinquents and other
9 youth to remain in elementary and secondary schools or in
10 alternative learning situations;

11 (6) Expanded use of professional and paraprofessional
12 personnel and volunteers to work effectively with youth;

13 (7) Youth-initiated programs and outreach programs
14 designed to assist youth who otherwise would not be reached by
15 traditional youth assistance programs;

16 (8) A statewide program designed to reduce the number
17 of commitments of juveniles to any form of juvenile facility as
18 a percentage of the state juvenile population; to increase the use

[COM. SUB. FOR S. B. NO. 393]

1 of nonsecure community-based facilities as a percentage of total
2 commitments to juvenile facilities; and to discourage the use of
3 secure incarceration and detention; and

4 _____(9) Transitional programs designed to assist youth
5 juveniles who are in the custody of the state upon reaching the
6 age of eighteen years.

7 (b) By January 1, 2017, the department and the Division
8 of Juvenile Services shall allocate at least fifty percent of all
9 community services funding, as defined in section two hundred
10 six, article one of this chapter, either provided directly or by
11 contracted service providers, for the implementation of
12 evidence-based practices, as defined in section two hundred six,
13 article one of this chapter.

14 ~~(b)~~ (c) (1) The Department of Health and Human
15 Resources shall establish an individualized program of
16 rehabilitation for each status offender referred to the department
17 and to each alleged juvenile delinquent referred to the
18 department after being allowed a pre-adjudicatory community

[COM. SUB. FOR S. B. NO. 393]

1 supervision period by the juvenile court, and for each
2 adjudicated juvenile delinquent who, after adjudication, is
3 referred to the department for investigation or treatment or
4 whose custody is vested in the department.

5 (2) ~~Individualized~~ An individualized program of
6 rehabilitation shall take into account the programs and services
7 to be provided by other public or private agencies or personnel
8 which are available in the community to deal with the
9 circumstances of the particular juvenile.

10 (3) For alleged juvenile delinquents and status offenders,
11 ~~those~~ an individualized program of rehabilitation shall be
12 furnished to the juvenile court and made available to counsel for
13 the juvenile; it may be modified from time to time at the
14 direction of the department or by order of the juvenile court.

15 (4) The department may develop an individualized
16 program of rehabilitation for any juvenile referred for
17 noncustodial counseling under section seven hundred ~~two~~ two-a,
18 article four of this chapter or for any juvenile upon the request

[COM. SUB. FOR S. B. NO. 393]

1 of a public or private agency.

2 (d) (1) The individualized program of rehabilitation
3 required by the provisions of subsection (c) of this section shall,
4 for any juvenile in out-of-home placement, include a plan to
5 return the juvenile to his or her home setting and transition the
6 juvenile into community services to continue his or her
7 rehabilitation.

8 (2) Planning for the transition shall begin upon the
9 juvenile's entry into the residential facility. The transition
10 process shall begin thirty days after admission to the residential
11 facility and conclude no later than three months after admission.

12 (3) The Department of Health and Human Resources
13 staff shall, during its monthly site visits at contracted residential
14 facilities, ensure that the individualized programs of
15 rehabilitation include a plan for transition in accordance with
16 this subsection.

17 (4) If further time in residential placement is necessary
18 and the most effective method of attaining the rehabilitation

[COM. SUB. FOR S. B. NO. 393]

1 goals identified by the rehabilitation individualized plan created
2 under subsection (c) of this section, then the department shall
3 provide information to the multidisciplinary team to substantiate
4 that further time in a residential facility is necessary. The court,
5 in consultation with the multidisciplinary team, may order an
6 extension of time in residential placement prior to the juvenile's
7 transition to the community if the court finds by clear and
8 convincing evidence that an extension is in the best interest of
9 the child. If the court finds that the evidence does not support an
10 extension, the court shall order that the transition to community
11 services proceed.

12 ~~(c)~~ (e) The Department of Health and Human Resources
13 and the Division of Juvenile Services are directed to enter into
14 cooperative arrangements and agreements with each other and
15 with private agencies or with agencies of the state and its
16 political subdivisions to fulfill their respective duties under this
17 article and chapter.

18 **§49-2-1003. Rehabilitative facilities for status offenders;**

[COM. SUB. FOR S. B. NO. 393]

1 **requirements; educational instruction.**

2 (a) The Department of Health and Human Resources
3 shall establish and maintain one or more rehabilitative facilities
4 to be used exclusively for the lawful custody of status offenders.
5 Each facility will be a nonsecure facility having as its purpose
6 the rehabilitation of status offenders. The facility will have a
7 bed capacity for not more than twenty juveniles and shall
8 minimize the institutional atmosphere and prepare the juvenile
9 for reintegration into the community.

10 (b) Rehabilitative programs and services shall be
11 provided by or through each facility and may include, but not be
12 limited to, medical, educational, vocational, social and
13 psychological guidance, training, counseling, ~~alcoholism~~
14 ~~treatment, drug~~ substance abuse treatment and other
15 rehabilitative services. The Department of Health and Human
16 Resources shall provide to each status offender committed to the
17 facility a program of treatment and services consistent with the
18 individualized program of rehabilitation developed for the

[COM. SUB. FOR S. B. NO. 393]

1 juvenile. In the case of any other juvenile residing at the facility,
2 the department shall provide those programs and services as may
3 be proper in the circumstances including, but not limited to, any
4 programs or services directed to be provided by the court.

5 (c) The Board of Education of the county in which the
6 facility is located shall provide instruction for juveniles residing
7 at the facility. Residents who can be permitted to do so shall
8 attend local schools and instruction shall otherwise take place at
9 the facility.

10 (d) Facilities established pursuant to this section shall be
11 structured as community-based facilities.

12 (e) The Department of Health and Human Resources may
13 enter into cooperative arrangements and agreements with private
14 agencies or with agencies of the state and its political
15 subdivisions to fulfill its duties under this section: *Provided,*
16 That after January 1, 2016, the department shall not enter into an
17 agreement with the Division of Juvenile Services to house
18 juvenile status offenders.

1 ARTICLE 4. COURT ACTIONS.

2 §49-4-403. Multidisciplinary treatment planning process;
3 coordination; access to information.

4 (a)(1) A multidisciplinary treatment planning process for
5 cases initiated pursuant to part six and part seven of article four
6 of this chapter shall be established within each county of the
7 state, either separately or in conjunction with a contiguous
8 county, by the secretary of the department with advice and
9 assistance from the prosecutor's advisory council as set forth in
10 section four, article four, chapter seven of this code. In each
11 circuit, the department shall coordinate with the prosecutor's
12 office, the public defender's office or other counsel representing
13 juveniles to designate, with the approval of the court, at least one
14 day per month on which multidisciplinary team meetings for that
15 circuit shall be held: *Provided, That* multidisciplinary team
16 meetings may be held on days other than the designated day or
17 days when necessary. The Division of Juvenile Services shall
18 establish a similar treatment planning process for delinquency

[COM. SUB. FOR S. B. NO. 393]

1 cases in which the juvenile has been committed to its custody,
2 including those cases in which the juvenile has been committed
3 for examination and diagnosis.

4 (2) This section does not require a multidisciplinary team
5 meeting to be held prior to temporarily placing a child or
6 juvenile out-of-home under exigent circumstances or upon a
7 court order placing a juvenile in a facility operated by the
8 Division of Juvenile Services.

9 (b) The case manager in the Department of Health and
10 Human Resources for the child, family or juvenile or the case
11 manager in the Division of Juvenile Services for a juvenile shall
12 convene a treatment team in each case when it is required
13 pursuant to this article.

14 (1) Prior to disposition, in each case in which a treatment
15 planning team has been convened, the team shall advise the court
16 as to the types of services the team has determined are needed
17 and the type of placement, if any, which will best serve the needs
18 of the child. If the team determines that an out-of-home

[COM. SUB. FOR S. B. NO. 393]

1 placement will best serve the needs of the child, the team shall
2 first consider placement with appropriate relatives then with
3 foster care homes, facilities or programs located within the state.
4 The team may only recommend placement in an out-of-state
5 facility if it concludes, after considering the best interests and
6 overall needs of the child, that there are no available and suitable
7 in-state facilities which can satisfactorily meet the specific needs
8 of the child.

9 (2) Any person authorized by the provisions of this
10 chapter to convene a multidisciplinary team meeting may seek
11 and receive an order of the circuit court setting such meeting and
12 directing attendance. Members of the multidisciplinary team
13 may participate in team meetings by telephone or video
14 conferencing. This subsection does not prevent the respective
15 agencies from designating a person other than the case manager
16 as a facilitator for treatment team meetings. Written notice shall
17 be provided to all team members of the availability to participate
18 by videoconferencing.

[COM. SUB. FOR S. B. NO. 393]

1 (c) The treatment team shall coordinate its activities and
2 membership with local family resource networks and coordinate
3 with other local and regional child and family service planning
4 committees to assure the efficient planning and delivery of child
5 and family services on a local and regional level.

6 (d) The multidisciplinary treatment team shall be
7 afforded access to information in the possession of the
8 Department of Health and Human Resources, Division of
9 Juvenile Services, law-enforcement agencies and other state,
10 county and local agencies. Those agencies shall cooperate in the
11 sharing of information as may be provided in article five of this
12 chapter or any other relevant provision of law. Any
13 multidisciplinary team member who acquires confidential
14 information may not disclose the information except as permitted
15 by the provisions of this code or court rules.

16 **§49-4-406. Multidisciplinary treatment process for status**
17 **offenders or delinquents; requirements; custody;**
18 **procedure; reports; cooperation; inadmissibility of**

[COM. SUB. FOR S. B. NO. 393]

1 **certain statements.**

2 (a) When a juvenile is adjudicated as a status offender
3 pursuant to section seven hundred eleven of this article, the
4 Department of Health and Human Resources shall promptly
5 convene a multidisciplinary treatment team and conduct an
6 assessment, utilizing a standard uniform comprehensive
7 assessment instrument or protocol, including a risk and needs
8 assessment, to determine the juvenile's mental and physical
9 condition, maturity and education level, home and family
10 environment, rehabilitative needs and recommended service
11 plan, which shall be provided in writing to the court and team
12 members. Upon completion of the assessment, the treatment
13 team shall prepare and implement a comprehensive,
14 individualized service plan for the juvenile.

15 (b) When a juvenile is adjudicated as a delinquent or has
16 been granted a preadjudicatory community supervision period
17 pursuant to section seven hundred eight of this article, the court,
18 either upon its own motion or motion of a party, may require the

[COM. SUB. FOR S. B. NO. 393]

1 Department of Health and Human Resources to convene a
2 multidisciplinary treatment team and conduct an assessment,
3 utilizing a standard uniform comprehensive assessment
4 instrument or protocol, including a risk and needs assessment, to
5 determine the juvenile's mental and physical condition, maturity
6 and education level, home and family environment, rehabilitative
7 needs and recommended service plan, which shall be provided
8 in writing to the court and team members. A referral to the
9 Department of Health and Human Resources to convene a
10 multidisciplinary treatment team and to conduct such an
11 assessment shall be made when the court is considering placing
12 the juvenile in the department's custody or placing the juvenile
13 out-of-home at the department's expense pursuant to section
14 seven hundred fourteen of this article. In any delinquency
15 proceeding in which the court requires the Department of Health
16 and Human Resources to convene a multidisciplinary treatment
17 team, the probation officer shall notify the department at least
18 fifteen working days before the court proceeding in order to

[COM. SUB. FOR S. B. NO. 393]

1 allow the department sufficient time to convene and develop an
2 individualized service plan for the juvenile.

3 (c) When a juvenile has been adjudicated and committed
4 to the custody of the Director of the Division of Juvenile
5 Services, including those cases in which the juvenile has been
6 committed for examination and diagnosis, the Division of
7 Juvenile Services shall promptly convene a multidisciplinary
8 treatment team and conduct an assessment, utilizing a standard
9 uniform comprehensive assessment instrument or protocol,
10 including a risk and needs assessment, to determine the
11 juvenile's mental and physical condition, maturity and education
12 level, home and family environment, rehabilitative needs and
13 recommended service plan. Upon completion of the assessment,
14 the treatment team shall prepare and implement a
15 comprehensive, individualized service plan for the juvenile,
16 which shall be provided in writing to the court and team
17 members. In cases where the juvenile is committed as a
18 post-sentence disposition to the custody of the Division of

[COM. SUB. FOR S. B. NO. 393]

1 Juvenile Services, the plan shall be reviewed quarterly by the
2 multidisciplinary treatment team. Where a juvenile has been
3 detained in a facility operated by the Division of Juvenile
4 Services without an active service plan for more than sixty days,
5 the director of the facility may call a multidisciplinary team
6 meeting to review the case and discuss the status of the service
7 plan.

8 (d) (1) The rules of juvenile procedure shall govern the
9 procedure for obtaining ~~an~~ any assessment of a juvenile,
10 preparing an individualized service plan and submitting the plan
11 and any assessment to the court.

12 (2) In juvenile proceedings conducted pursuant to part
13 seven of this article, the following representatives shall serve as
14 members and attend each meeting of the multidisciplinary
15 treatment team, so long as they receive notice at least seven days
16 prior to the meeting; ~~the treatment team shall consist of~~

17 (A) The juvenile;

18 (B) The juvenile's case manager in the Department of

[COM. SUB. FOR S. B. NO. 393]

1 Health and Human Resources or the Division of Juvenile
2 Services;

3 (C) The juvenile's parent ~~or parents~~, guardian or
4 ~~guardians or custodial relatives~~ custodian;

5 (D) The juvenile's attorney;

6 (E) Any attorney representing a member of the
7 multidisciplinary treatment team;

8 (F) The prosecuting attorney or his or her designee;

9 (G) ~~An appropriate school official~~ The county school
10 superintendent or the superintendent's designee;

11 (H) A treatment or service provider with training and
12 clinical experience coordinating behavioral or mental health
13 treatment; and

14 (I) Any other person or agency representative who may
15 assist in providing recommendations for the particular needs of
16 the juvenile and family, including domestic violence service
17 providers. In delinquency proceedings, the probation officer
18 shall be a member of a multidisciplinary treatment team. When

[COM. SUB. FOR S. B. NO. 393]

1 appropriate, the juvenile case manager in the Department of
2 Health and Human Resources and the Division of Juvenile
3 Services shall cooperate in conducting multidisciplinary
4 treatment team meetings when it is in the juvenile's best interest.

5 (3) Prior to disposition, in each case in which a treatment
6 planning team has been convened, the team shall advise the court
7 as to the types of services the team has determined are needed
8 and type of placement, if any, which will best serve the needs of
9 the child. If the team determines that an out-of-home placement
10 will best serve the needs of the child, the team shall first consider
11 placement at facilities or programs located within the state. The
12 team may only recommend placement in an out-of-state facility
13 if it concludes, after considering the best interests and overall
14 needs of the child, that there are no available and suitable
15 in-state facilities which can satisfactorily meet the specific needs
16 of the child. The multidisciplinary treatment team shall also
17 determine and advise the court as to the individual treatment and
18 rehabilitation plan recommended for the child for either

[COM. SUB. FOR S. B. NO. 393]

1 out-of-home placement or community supervision. The plan
2 may focus on reducing the likelihood of reoffending,
3 requirements for the child to take responsibility for his or her
4 actions, completion of evidence-based services or programs or
5 any other relevant goal for the child. The plan may also include
6 opportunities to incorporate the family, custodian or guardian
7 into the treatment and rehabilitation process.

8 (4) The multidisciplinary treatment team shall submit
9 written reports to the court as required by applicable law or by
10 the court, shall meet with the court at least every three months,
11 as long as the juvenile remains in the legal or physical custody
12 of the state, and shall be available for status conferences and
13 hearings as required by the court. The multidisciplinary
14 treatment team shall monitor progress of the plan identified in
15 subdivision (3) of this subsection and review progress of the plan
16 at the regular meetings held at least every three months pursuant
17 to this section, or at shorter intervals, as ordered by the court,
18 and shall report to the court on the progress of the plan or if

[COM. SUB. FOR S. B. NO. 393]

1 additional modification is necessary.

2 (5) In any case in which a juvenile has been placed out of
3 his or her home except for a temporary placement in a shelter or
4 detention center, the multidisciplinary treatment team shall
5 cooperate with the state agency in whose custody the juvenile is
6 placed to develop an after-care plan. The rules of juvenile
7 procedure and section four hundred nine of this article govern
8 the development of an after-care plan for a juvenile, the
9 submission of the plan to the court and any objection to the
10 after-care plan.

11 (6) If a juvenile respondent admits the underlying
12 allegations of the case initiated pursuant to part VII of this
13 article, in the multidisciplinary treatment planning process, his
14 or her statements may not be used in any juvenile or criminal
15 proceedings against the juvenile, except for perjury or false
16 swearing.

17 **§49-4-409. After-care plans; contents; written comments;**
18 **contacts; objections; courts.**

[COM. SUB. FOR S. B. NO. 393]

1 (a) Prior to the discharge of a child from any ~~institution~~
2 ~~or facility~~ out-of-home placement to which the juvenile was
3 committed pursuant to this chapter, the ~~superintendent of the~~
4 ~~institution, or facility or~~ the department or the Division of
5 Juvenile Services shall ~~call~~ convene a meeting of the
6 multidisciplinary treatment team to which the child has been
7 referred or, if no referral has been made, convene a
8 multidisciplinary treatment team for any child for which a
9 multidisciplinary treatment plan is required by this article and
10 forward a copy of the juvenile's proposed after-care plan to the
11 court which committed the juvenile. A copy of the plan shall
12 also be sent to: (1) The child's ~~parents or legal~~ guardian or
13 custodian; (2) the child's lawyer; (3) the child's probation officer
14 or community mental health center professional; (4) the
15 prosecuting attorney of the county in which the original
16 commitment proceedings were held; and (5) the principal of the
17 school which the child will attend. The plan shall have a list of
18 the names and addresses of these persons attached to it.

[COM. SUB. FOR S. B. NO. 393]

1 (b) The after-care plan shall contain a detailed
2 description of the education, counseling and treatment which the
3 child received ~~while at the institution or facility~~ at the
4 out-of-home placement and it shall also propose a plan for
5 education, counseling and treatment for the child upon the child's
6 discharge. The plan shall also contain a description of any
7 problems the child has, including the source of those problems,
8 and it shall propose a manner for addressing those problems
9 upon discharge.

10 (c) Within twenty-one days of receiving the plan, the
11 child's probation officer or community mental health center
12 professional shall submit written comments upon the plan to the
13 court which committed the child. Any other person who
14 received a copy of the plan pursuant to subsection (a) of this
15 section may submit written comments upon the plan to the court
16 which committed the child. Any person who submits comments
17 upon the plan shall send a copy of those comments to every
18 other person who received a copy of the plan.

[COM. SUB. FOR S. B. NO. 393]

1 (d) Within twenty-one days of receiving the plan, the
2 child's probation officer or community mental health center
3 professional shall contact all persons, organizations and agencies
4 which are to be involved in executing the plan to determine
5 whether they are capable of executing their responsibilities under
6 the plan and to further determine whether they are willing to
7 execute their responsibilities under the plan.

8 (e) If adverse comments or objections regarding the plan
9 are submitted to the circuit court, it shall, within forty-five days
10 of receiving the plan, hold a hearing to consider the plan and the
11 adverse comments or objections. Any person, organization or
12 agency which has responsibilities in executing the plan, or their
13 representatives, may be required to appear at the hearing unless
14 they are excused by the circuit court. Within five days of the
15 hearing, the circuit court shall issue an order which adopts the
16 plan as submitted or as modified in response to any comments or
17 objections.

18 (f) If no adverse comments or objections are submitted,

[COM. SUB. FOR S. B. NO. 393]

1 a hearing need not be held. In that case, the circuit court shall
2 consider the plan as submitted and shall, within forty-five days
3 of receiving the plan, issue an order which adopts the plan as
4 submitted.

5 (g) Notwithstanding the provisions of subsections (e) and
6 (f) of this section, the plan which is adopted by the circuit court
7 shall be in the best interests of the child and shall also be in
8 conformity with West Virginia's interest in youths as embodied
9 in this chapter.

10 (h) The court which committed the child shall appoint the
11 child's probation officer or community mental health center
12 professional to act as supervisor of the plan. The supervisor
13 shall report the child's progress under the plan to the court every
14 sixty days or until the court determines that no report or no
15 further care is necessary.

16 **§49-4-413. Individualized case planning.**

17 (a) For any juvenile ordered to probation supervision
18 pursuant to section seven hundred fourteen, article four of this

[COM. SUB. FOR S. B. NO. 393]

1 chapter, the probation officer assigned to the ~~court~~ juvenile shall
2 develop and implement an individualized case plan in
3 consultation with the juvenile's parents, guardian or custodian,
4 and other appropriate parties, and ~~informed by~~ based upon the
5 results of a risk and needs assessment conducted within the last
6 six months prior to the disposition to probation. The probation
7 officer shall work with the juvenile and his or her family,
8 guardian or custodian to implement the case plan following
9 disposition. At a minimum, the case plan shall:

10 (1) Identify the actions to be taken by the juvenile and,
11 if appropriate, the juvenile's parents, guardian or custodian to
12 ensure future lawful conduct and compliance with the court's
13 disposition order; and

14 (2) Identify the services to be offered and provided to the
15 juvenile and, if appropriate, the juvenile's parents, guardian or
16 custodian and may include services to address: ~~the following:~~
17 Mental health and substance abuse issues; education; individual,
18 group and family counseling services; community restoration; or

[COM. SUB. FOR S. B. NO. 393]

1 other relevant concerns identified by the probation officer.

2 (b) For any juvenile disposed to an out-of-home
3 placement with the department, the department shall ensure that
4 the residential service provider develops and implements an
5 individualized case plan ~~informed by~~ based upon the
6 recommendations ~~made to the court by~~ of the multidisciplinary
7 team pursuant to section four hundred six, article four of this
8 chapter and ~~informed by~~ the results of a risk and needs
9 assessment. At a minimum, the case plan shall include:

10 (1) Specific treatment goals and the actions to be taken
11 by the juvenile in order to demonstrate satisfactory attainment of
12 each goal;

13 (2) The services to be offered and provided by the
14 residential service providers; and

15 (3) A detailed plan designed to assure appropriate
16 reintegration of the juvenile to his or her family, guardian,
17 school and community following the satisfactory completion of
18 the case plan treatment goals, including a protocol and timeline

[COM. SUB. FOR S. B. NO. 393]

1 for engaging the parents, guardians or custodians prior to the
2 release of the juvenile.

3 (c) For any juvenile committed to the Division of
4 Juvenile Services, the Division of Juvenile Services shall
5 develop and implement an individualized case plan ~~informed by~~
6 based upon the recommendations made to the court by the
7 multidisciplinary team pursuant to section four hundred six,
8 article four of this chapter and ~~informed by~~ the results of a risk
9 and needs assessment. At a minimum, the case plan shall
10 include:

11 (1) Specific correctional goals and the actions to be taken
12 by the juvenile ~~in order~~ to demonstrate satisfactory attainment of
13 each goal;

14 (2) The services to be offered and provided by the
15 Division of Juvenile Services and any contracted service
16 providers; and

17 (3) A detailed plan designed to assure appropriate
18 reintegration of the juvenile to his or her family, guardian,

[COM. SUB. FOR S. B. NO. 393]

1 school and community following the satisfactory completion of
2 the case plan treatment goals, including a protocol and timeline
3 for engaging the parents, guardians or custodians prior to the
4 release of the juvenile.

5 **§49-4-702. Prepetition diversion to informal resolution;**
6 **mandatory prepetition diversion program for status**
7 **offenses and misdemeanor offenses; prepetition**
8 **review team.**

9 _____ (a) Before a juvenile petition is formally filed with the
10 court, the court may refer the matter to a ~~state department case~~
11 worker, or probation officer or truancy diversion specialist for
12 preliminary inquiry to determine whether the matter can be
13 resolved informally without the formal filing of a petition with
14 the court.

15 (b) (1) If the matter is for a truancy offense, the
16 prosecutor shall refer the matter to a state department worker,
17 probation officer or truancy diversion specialist who shall
18 develop a diversion program pursuant to subsection (d) of this

[COM. SUB. FOR S. B. NO. 393]

1 section.

2 (2) If the matter is for a status offense other than truancy,
3 the prosecutor shall refer the juvenile to a case worker or
4 probation officer who shall develop a diversion program
5 pursuant to subsection (d) of this section.

6 (3) The prosecutor is not required to refer the juvenile for
7 development of a diversion program pursuant to subdivision (1)
8 or (2) of this subsection and may proceed to file a petition with
9 the court if he or she determines:

10 (A) The juvenile has a prior adjudication for a status or
11 delinquency offense; or

12 (B) There exists a significant and likely risk of harm to
13 the juvenile, a family member or the public.

14 (c) If the matter is for a nonviolent misdemeanor offense,
15 the prosecutor shall determine whether the case can be resolved
16 informally through a diversion program without the filing of a
17 petition. If the prosecutor determines that a diversion program
18 is appropriate, it shall refer the matter to a case worker or

[COM. SUB. FOR S. B. NO. 393]

1 probation officer who shall develop a diversion program
2 pursuant to subsection (d) of this section.

3 (d) (1) When developing a diversion program, the case
4 worker, probation officer or truancy diversion specialist shall:

5 (A) Conduct an assessment of the juvenile to develop a
6 diversion agreement;

7 (B) Create a diversion agreement;

8 (C) Obtain consent from the juvenile and his or her
9 parent, guardian or custodian to the terms of the diversion
10 agreement;

11 (D) Refer the juvenile and, if necessary, his or her parent,
12 guardian or custodian to services in the community pursuant to
13 the diversion agreement.

14 (2) A diversion agreement may include:

15 (A) Referral to community services as defined in section
16 two hundred six, article one of this chapter for the juvenile to
17 address the assessed need;

18 (B) Referral to services for the parent, guardian or

[COM. SUB. FOR S. B. NO. 393]

1 custodian of the juvenile;

2 (C) Referral to one or more community work service
3 programs for the juvenile;

4 (D) A requirement that the juvenile regularly attend
5 school;

6 (E) Community-based sanctions to address
7 noncompliance; or

8 (F) Any other efforts which may reasonably benefit the
9 community, the juvenile and his or her parent, guardian or
10 custodian.

11 (3) When a referral to a service provider occurs, the
12 service provider shall make reasonable efforts to contact the
13 juvenile and his or her parent, custodian or guardian within
14 seventy-two hours of the referral.

15 (4) Upon request by the case worker, probation officer or
16 truancy diversion specialist, the court may enter reasonable and
17 relevant orders to the parent, custodian or guardian of the
18 juvenile who have consented to the diversion agreement as is

[COM. SUB. FOR S. B. NO. 393]

1 necessary and proper to carry out the agreement.

2 (5) If the juvenile and his or her parent, custodian or
3 guardian do not consent to the terms of the diversion agreement
4 created by the case worker, probation officer or truancy
5 diversion specialist, the petition may be filed with the court.

6 (6) Referral to a prepetition diversion program shall toll
7 the statute of limitations for status and delinquency offenses.

8 (7) Probation officers may be authorized by the court to
9 participate in a diversion program.

10 (e) The case worker, probation officer or truancy
11 diversion specialist shall monitor the juvenile's compliance with
12 any diversion agreement.

13 (1) If the juvenile successfully completes the terms of the
14 diversion agreement, a petition shall not be filed with the court
15 and no further action shall be taken.

16 (2) If the juvenile is unsuccessful in or noncompliant
17 with the diversion agreement, the diversion agreement shall be
18 referred to a prepetition review team convened by the case

[COM. SUB. FOR S. B. NO. 393]

1 worker, probation officer or the truancy diversion specialist:
2 Provided, That if a new delinquency offense occurs, a petition
3 may be filed with the court.

4 (f) (1) The prepetition review team may be a subset of a
5 multidisciplinary team established pursuant to section four
6 hundred six, article four of this chapter.

7 (2) The prepetition review team may consist of:

8 (A) A case worker knowledgeable about community
9 services available and authorized to facilitate access to services;

10 (B) A service provider;

11 (C) A school superintendent or his or her designee; or

12 (D) Any other person, agency representative, member of
13 the juvenile's family, or a custodian or guardian who may assist
14 in providing recommendations on community services for the
15 particular needs of the juvenile and his or her family.

16 (3) The prepetition review team shall review the
17 diversion agreement and the service referrals completed and
18 determine whether other appropriate services are available to

[COM. SUB. FOR S. B. NO. 393]

1 address the needs of the juvenile and his or her family.

2 (4) The prepetition review shall occur within fourteen
3 days of referral from the state department worker, probation
4 officer or truancy diversion specialist.

5 (5) After the prepetition review, the prepetition review
6 team may:

7 (A) Refer a modified diversion agreement back to the
8 case worker, probation officer or truancy diversion specialist;

9 (B) Advise the case worker, probation officer or truancy
10 diversion specialist to file a petition with the court; or

11 (C) Advise the case worker to open an investigation for
12 child abuse or neglect.

13 (g) The requirements of this section are not mandatory
14 until July 1, 2016: *Provided*, That nothing in this section
15 prohibits a judicial circuit from continuing to operate a truancy
16 or other juvenile treatment program that existed as of January 1,
17 2015: *Provided, however*, That any judicial circuit desiring to
18 create a diversion program after the effective date of this section

[COM. SUB. FOR S. B. NO. 393]

1 and prior to July 1, 2016, may only do so pursuant to this
2 section.

3 **§49-4-702a. Noncustodial counseling or community services**
4 **provided to a juvenile; prepetition counsel and**
5 **advice.**

6 (a) The court at any time, or the department or other
7 official upon a request from a parent, guardian or custodian,
8 may, before a petition is filed under this article, refer a juvenile
9 alleged to be a delinquent or a status offender to a counselor at
10 the department or a community mental health center, ~~or~~ other
11 professional counselor in the community or to a truancy
12 diversion specialist. In the event the juvenile refuses to respond
13 to this referral, the department may serve a notice by first class
14 mail or personal service of process upon the juvenile, setting
15 forth the facts and stating that a noncustodial order will be
16 sought from the court directing the juvenile to submit to
17 counseling or community services. The notice shall set forth the
18 time and place for the hearing on the matter. The court or

[COM. SUB. FOR S. B. NO. 393]

1 referee after a hearing may direct the juvenile to participate in a
2 noncustodial period of counseling or community services that
3 may not exceed six months. Upon recommendation of the
4 department or request by the juvenile's parent, custodian or
5 guardian, the court or referee may allow or require the parent,
6 custodian or guardian to participate in this noncustodial
7 counseling or community services. No information obtained as
8 the result of counseling or community services is admissible in
9 a subsequent proceeding under this article.

10 (b) Before a petition is formally filed with the court, the
11 probation officer or other officer of the court designated by it,
12 subject to its direction, may give counsel and advice to the
13 parties with a view to an informal adjustment period if it
14 appears:

15 (1) The admitted facts bring the case within the
16 jurisdiction of the court;

17 (2) Counsel and advice without an adjudication would be
18 in the best interest of the public and the juvenile; and

[COM. SUB. FOR S. B. NO. 393]

1 (3) The juvenile and his or her parents, guardian or other
2 custodian consent thereto with knowledge that consent is not
3 obligatory.

4 (c) The giving of counsel and advice pursuant to this
5 section may not continue longer than six months from the day it
6 is commenced unless extended by the court for an additional
7 period not to exceed six months.

8 **§49-4-711. Adjudication for alleged status offenders and**
9 **delinquents; mandatory initial disposition of status**
10 **offenders.**

11 At the outset of an adjudicatory hearing, the court shall
12 inquire of the juvenile whether he or she wishes to admit or deny
13 the allegations in the petition. The juvenile may elect to stand
14 silent, in which event the court shall enter a general denial of all
15 allegations in the petition.

16 (1) If the respondent juvenile admits the allegations of
17 the petition, the court shall consider the admission to be proof of
18 the allegations if the court finds: (1) The respondent fully

[COM. SUB. FOR S. B. NO. 393]

1 understands all of his or her rights under this article; (2) the
2 respondent voluntarily, intelligently and knowingly admits all
3 facts requisite for an adjudication; and (3) the respondent in his
4 or her admission has not set forth facts which constitute a
5 defense to the allegations.

6 (2) If the respondent juvenile denies the allegations, the
7 court shall dispose of all pretrial motions and the court or jury
8 shall proceed to hear evidence.

9 (3) If the allegations in a petition alleging that the
10 juvenile is delinquent are admitted or are sustained by proof
11 beyond a reasonable doubt, the court shall schedule the matter
12 for disposition pursuant to section seven hundred four of this
13 article. The court shall receive and consider the results of the risk
14 and needs assessment prior to or at the disposition pursuant to
15 section seven hundred twenty-four, article four of this chapter.

16 (4) If the allegations in a petition alleging that the
17 juvenile is a status offender are admitted or sustained by clear
18 and convincing ~~proof~~ evidence, the court shall consider the

[COM. SUB. FOR S. B. NO. 393]

1 results of the risk and needs assessment prior to or at the
2 disposition pursuant to section seven hundred twenty-four,
3 article four of this chapter and refer the juvenile to the
4 Department of Health and Human Resources for services,
5 pursuant to section seven hundred twelve of this article, and
6 order the department to report back to the court with regard to
7 the juvenile's progress at least every ninety days or until the
8 court, upon motion or sua sponte, orders further disposition
9 under section seven hundred twelve of this article or dismisses
10 the case from its docket: *Provided*, That in a judicial circuit
11 ~~operating its own~~ a truancy program, a circuit judge may, in lieu
12 of referring truant juveniles to the department, order that the
13 juveniles be supervised by his or her probation office: *Provided*,
14 however, That a circuit judge may also refer a truant juvenile to
15 a truancy diversion specialist.

16 (5) If the allegations in a petition are not sustained by
17 ~~proof~~ evidence as provided in subsections (c) and (d) of this
18 section, the petition shall be dismissed and the juvenile shall be

[COM. SUB. FOR S. B. NO. 393]

1 discharged if he or she is in custody.

2 (6) Findings of fact and conclusions of law addressed to
3 all allegations in the petition shall be stated on the record or
4 reduced to writing and filed with the record or incorporated into
5 the order of the court. The record shall include the treatment and
6 rehabilitation plan the court has adopted after recommendation
7 by the multidisciplinary team as provided for in section four
8 hundred six, article four of this chapter.

9 **§49-4-712. Intervention and services by the department**
10 **pursuant to initial disposition for status offenders;**
11 **enforcement; further disposition; detention;**
12 **out-of-home placement; department custody; least**
13 **restrictive alternative; appeal; prohibiting placement**
14 **of status offenders in a Division of Juvenile Services**
15 **facility on or after January 1, 2016.**

16 (a) The services provided by the department for juveniles
17 adjudicated as status offenders shall be consistent with part ten,
18 article two of this chapter and shall be designed to develop skills

[COM. SUB. FOR S. B. NO. 393]

1 and supports within families and to resolve problems related to
2 the juveniles or conflicts within their families. Services may
3 include, but are not limited to, referral of juveniles and parents,
4 guardians or custodians and other family members to services for
5 psychiatric or other medical care, or psychological, welfare,
6 legal, educational or other social services, as appropriate to the
7 needs of the juvenile and his or her family.

8 (b) If the juvenile, or his or her parent, guardian or
9 custodian, fails to comply with the services provided in
10 subsection (a) of this section, the department may petition the
11 circuit court:

12 (1) For a valid court order, as defined in section two
13 hundred seven, article one of this chapter, to enforce compliance
14 with a service plan or to restrain actions that interfere with or
15 defeat a service plan; or

16 (2) For a valid court order to place a juvenile out of home
17 in a nonsecure or staff-secure setting, and/or to place a juvenile
18 in custody of the department: Provided, That a juvenile

[COM. SUB. FOR S. B. NO. 393]

1 adjudicated as a status offender may not be placed in an
2 out-of-home placement, excluding placements made for abuse
3 and neglect, if that juvenile has had no prior adjudications for a
4 status or delinquency offense, or no prior disposition to a
5 pre-adjudicatory improvement period or probation for the current
6 matter: *Provided, however,* That if the court finds by clear and
7 convincing evidence the existence of a significant and likely risk
8 of harm to the juvenile, a family member or the public and
9 continued placement in the home is contrary to the best interests
10 of the juvenile, such juvenile may be ordered to an out-of-home
11 placement: *Provided further,* That the court finds the
12 department has made all reasonable efforts to prevent removal
13 of the juvenile from his or her home, or that such reasonable
14 efforts are not required due to an emergent situation.

15 (c) In ordering any further disposition under this section,
16 the court is not limited to the relief sought in the department's
17 petition and shall make reasonable efforts to prevent removal of
18 the juvenile from his or her home or, as an alternative, to place

[COM. SUB. FOR S. B. NO. 393]

1 the juvenile in a community-based facilities facility which ~~are~~ is
2 the least restrictive alternative appropriate to the needs of the
3 juvenile and the community. The disposition may include
4 reasonable and relevant orders to the parents, guardians or
5 custodians of the juvenile as is necessary and proper to
6 effectuate the disposition.

7 (d) (1) If the court finds that placement in a residential
8 facility is necessary to provide the services under subsection (a)
9 of this section, except as prohibited by subdivision (2),
10 subsection (b) of this section, the court shall make findings of
11 fact as to the necessity of this placement, stated on the record or
12 reduced to writing and filed with the record or incorporated into
13 the order of the court.

14 (2) The findings of fact shall include the factors that
15 indicate:

16 (A) The likely effectiveness of placement in a residential
17 facility for the juvenile; and

18 (B) The community services which were previously

[COM. SUB. FOR S. B. NO. 393]

1 attempted.

2 ~~(d)~~ (e) The disposition of the juvenile may not be
3 affected by the fact that the juvenile demanded a trial by jury or
4 made a plea of ~~denial~~ not guilty. Any order providing
5 disposition other than mandatory referral to the department for
6 services is subject to appeal to the Supreme Court of Appeals.

7 ~~(e)~~ (f) Following any further disposition by the court, the
8 court shall inquire of the juvenile whether or not appeal is
9 desired and the response shall be transcribed; a negative
10 response may not be construed as a waiver. The evidence shall
11 be transcribed as soon as practicable and made available to the
12 juvenile or his or her counsel, if it is requested for purposes of
13 further proceedings. A judge may grant a stay of execution
14 pending further proceedings.

15 (g) A juvenile adjudicated solely as a status offender on
16 or after January 1, 2016, may not be placed in a Division of
17 Juvenile Services facility.

18 **§49-4-714. Disposition of juvenile delinquents; appeal.**

[COM. SUB. FOR S. B. NO. 393]

1 (a) In aid of disposition of juvenile delinquents, the
2 juvenile probation officer assigned to the ~~court~~ juvenile shall,
3 upon request of the court, make an investigation of the
4 environment of the juvenile and the alternative dispositions
5 possible. The court, upon its own motion, or upon request of
6 counsel, may order the use of a standardized screener, as defined
7 in section two hundred six, article one of this chapter or, if
8 additional information is necessary, a psychological examination
9 of the juvenile. The report of an examination and other
10 investigative and social reports shall not be ~~made available to~~
11 relied upon the court ~~until after the adjudicatory hearing in~~
12 making a determination of adjudication. Unless waived, copies
13 of the report shall be provided to counsel for the petitioner and
14 counsel for the juvenile no later than seventy-two hours prior to
15 the dispositional hearing.

16 (b) Following the adjudication, the court shall receive
17 and consider the results of a risk and needs assessment
18 conducted pursuant to section seven hundred twenty-four, article

[COM. SUB. FOR S. B. NO. 393]

1 four of this chapter and shall conduct the ~~dispositional~~
2 ~~proceeding disposition~~, giving all parties an opportunity to be
3 heard. The disposition may include reasonable and relevant
4 orders to the parents, custodians or guardians of the juvenile as
5 is necessary and proper to effectuate the disposition. ~~In~~ At
6 disposition the court shall not be limited to the relief sought in
7 the petition and shall, in electing from the following alternatives,
8 consider the best interests of the juvenile and the welfare of the
9 public:

10 (1) Dismiss the petition;

11 (2) Refer the juvenile and the juvenile's parent or
12 custodian to a community agency for needed assistance and
13 dismiss the petition;

14 (3) Upon a finding that the juvenile is in need of
15 extra-parental supervision: (A) Place the juvenile under the
16 supervision of a probation officer of the court or of the court of
17 the county where the juvenile has his or her usual place of abode
18 or other person while leaving the juvenile in custody of his or

[COM. SUB. FOR S. B. NO. 393]

1 her parent or custodian; and (B) prescribe a program of treatment
2 or therapy or limit the juvenile's activities under terms which are
3 reasonable and within the child's ability to perform, including
4 participation in the litter control program established pursuant to
5 section three, article fifteen-a, chapter twenty-two of this code or
6 other appropriate programs of community service;

7 (4) Upon a finding that a parent or custodian is not
8 willing or able to take custody of the juvenile, that a juvenile is
9 not willing to reside in the custody of his or her parent or
10 custodian or that a parent or custodian cannot provide the
11 necessary supervision and care of the juvenile, the court may
12 place the juvenile in temporary foster care or temporarily
13 commit the juvenile to the department or a child welfare agency.
14 The court order shall state that continuation in the home is
15 contrary to the best interest of the juvenile and why; and whether
16 or not the department made a reasonable effort to prevent the
17 placement or that the emergency situation made ~~such~~ those
18 efforts unreasonable or impossible. Whenever the court transfers

[COM. SUB. FOR S. B. NO. 393]

1 custody of a youth to the department, an appropriate order of
2 financial support by the parents or guardians shall be entered in
3 accordance with part eight, article four of this chapter and
4 guidelines promulgated by the Supreme Court of Appeals;

5 (5)(A) Upon a finding that the best interests of the
6 juvenile or the welfare of the public require it, and upon an
7 adjudication of delinquency, the court may commit the juvenile
8 to the custody of the Director of the Division of Juvenile
9 Services for placement in a juvenile services facility for the
10 treatment, instruction and rehabilitation of juveniles. The court
11 maintains discretion to consider alternative sentencing
12 arrangements.

13 (B) Notwithstanding any provision of this code to the
14 contrary, in the event that the court determines that it is in the
15 juvenile's best interests or required by the public welfare to place
16 the juvenile in the custody of the Division of Juvenile Services,
17 the court shall provide the Division of Juvenile Services with
18 access to all relevant court orders and records involving the

[COM. SUB. FOR S. B. NO. 393]

1 underlying offense or offenses for which the juvenile was
2 adjudicated delinquent, including sentencing and presentencing
3 reports and evaluations, and provide the division with access to
4 school records, psychological reports and evaluations, risk and
5 needs assessment results, medical reports and evaluations or any
6 other such records as may be in the court's possession as would
7 enable the Division of Juvenile Services to better assess and
8 determine the appropriate counseling, education and placement
9 needs for the juvenile offender.

10 (C) Commitments ~~shall~~ may not exceed the maximum
11 term for which an adult could have been sentenced for the same
12 offense and any such maximum allowable ~~sentence~~ term of
13 confinement to be served in a juvenile correctional facility ~~may~~
14 shall take into account any time served by the juvenile in a
15 detention center pending adjudication, disposition or transfer.
16 The order shall state that continuation in the home is contrary to
17 the best interests of the juvenile and why; and whether or not the
18 state department made a reasonable effort to prevent the

[COM. SUB. FOR S. B. NO. 393]

1 placement or that the emergency situation made those efforts
2 unreasonable or impossible; or

3 (6) After a hearing conducted under the procedures set
4 out in subsections (c) and (d), section four, article five, chapter
5 twenty-seven of this code, commit the juvenile to a mental health
6 facility in accordance with the juvenile's treatment plan; the
7 director of the mental health facility may release a juvenile and
8 return him or her to the court for further disposition. The order
9 shall state that continuation in the home is contrary to the best
10 interests of the juvenile and why; and whether or not the state
11 department made a reasonable effort to prevent the placement or
12 that the emergency situation made those efforts unreasonable or
13 impossible.

14 The court shall make all reasonable efforts to place the
15 juvenile in the least restrictive alternative appropriate to the
16 needs of the juvenile and the community: *Provided*, That a
17 juvenile adjudicated delinquent for a nonviolent misdemeanor
18 offense may not be placed in an out-of-home placement within

[COM. SUB. FOR S. B. NO. 393]

1 the Division of Juvenile Services or the department if that
2 juvenile has no prior adjudications as either a status offender or
3 as a delinquent, or no prior dispositions to a pre-adjudicatory
4 improvement period or probation for the current matter,
5 excluding placements made for abuse or neglect: *Provided,*
6 *however,* That if the court finds by clear and convincing
7 evidence that there is a significant and likely risk of harm to the
8 juvenile, a family member or the public and that continued
9 placement in the home is contrary to the best interest of the
10 juvenile, such juvenile may be ordered to an out-of-home
11 placement: *Provided further,* That the department has made all
12 reasonable efforts to prevent removal of the juvenile from his or
13 her home, or that reasonable efforts are not required due to an
14 emergent situation.

15 (c) In any case in which the court decides to order the
16 juvenile placed in an out-of-state facility or program, it shall set
17 forth in the order directing the placement the reasons the juvenile
18 was not placed in an in-state facility or program.

[COM. SUB. FOR S. B. NO. 393]

1 (d) The disposition of the juvenile shall not be affected
2 by the fact that the juvenile demanded a trial by jury or made a
3 plea of ~~denial~~ not guilty. Any ~~dispositional order~~ disposition is
4 subject to appeal to the Supreme Court of Appeals.

5 (e) Following disposition, the court shall inquire whether
6 the juvenile wishes to appeal and the response shall be
7 transcribed; a negative response shall not be construed as a
8 waiver. The evidence shall be transcribed as soon as practicable
9 and made available to the juvenile or his or her counsel, if the
10 same is requested for purposes of further proceedings. A judge
11 may grant a stay of execution pending further proceedings.

12 (f) Following a disposition under subdivision (4), (5) or
13 (6), subsection (b) of this section, the court shall include in the
14 findings of fact the treatment and rehabilitation plan the court
15 has adopted upon recommendation of the multidisciplinary team
16 under section four hundred six, article four of this chapter.

17 (f) (g) Notwithstanding any other provision of this code
18 to the contrary, if a juvenile charged with delinquency under this

[COM. SUB. FOR S. B. NO. 393]

1 chapter is transferred to adult jurisdiction and there tried and
2 convicted, the court may make its disposition in accordance with
3 this section in lieu of sentencing the person as an adult.

4 **§49-4-718. Modification of dispositional orders; motions;**
5 **hearings.**

6 (a) A dispositional order of the court may be modified:

7 (1) Upon the motion of the probation officer, a
8 department official, the director of the Division of Juvenile
9 Services or prosecuting attorney; or

10 (2) Upon the request of the ~~child~~ juvenile or a ~~child's~~
11 juvenile's parent, guardian or custodian who alleges a change of
12 circumstances relating to disposition of the ~~child~~ juvenile.

13 (b) Upon such a motion or request, the court shall
14 conduct a review ~~proceeding~~ hearing, except that if the last
15 dispositional order was within the previous six months, the court
16 may deny a request for review. Notice in writing of a review
17 ~~proceeding~~ hearing shall be given to the ~~child~~ juvenile, the
18 ~~child's~~ juvenile's parent, guardian or custodian and all counsel

[COM. SUB. FOR S. B. NO. 393]

1 not less than seventy-two hours prior to the proceeding. The
2 court shall review the performance of the ~~child~~ juvenile, the
3 ~~child's~~ juvenile's parent or custodian, the ~~child's~~ juvenile's
4 ~~social case~~ worker and other persons providing assistance to the
5 ~~child~~ juvenile or ~~child's~~ juvenile's family. If the motion or
6 request for review of disposition is based upon an alleged
7 violation of a court order, the court may modify the ~~dispositional~~
8 disposition order ~~to~~ and impose a more restrictive alternative if
9 it finds clear and convincing proof of substantial violation. In
10 the absence of such ~~proof~~ evidence, the court may decline to
11 modify the dispositional order or may modify the order ~~to~~ and
12 impose one of the less restrictive alternatives set forth in section
13 seven hundred twelve of this article. A juvenile may not be
14 required to seek a modification order as provided in this section
15 in order to exercise his or her right to seek ~~release~~ relief by
16 habeas corpus.

17 (c) In a hearing for modification of a dispositional order,
18 or in any other dispositional hearing, the court shall consider the

[COM. SUB. FOR S. B. NO. 393]

1 best interests of the child and the welfare of the public.

2 (d)(1) For dispositional orders that include probation, the
3 juvenile's probation officer shall submit an overview to the court
4 of the juvenile's compliance with the conditions of probation and
5 goals of his or her case plan every ninety days.

6 (2) If the juvenile is compliant and no longer in need of
7 probation supervision, the probation officer shall submit a
8 recommendation for discharge from probation supervision. If
9 the court determines that early termination of the probation term
10 is warranted, it may issue an order discharging the juvenile from
11 probation without conducting a review hearing.

12 (3) If the juvenile is not compliant with the conditions or
13 has not met his or her goals, the probation officer shall include
14 an accompanying recommendation to the court with additional
15 or changed conditions or goals necessary to achieve compliance.
16 If the court determines that changes to the conditions of
17 probation are warranted, the court shall conduct a review hearing
18 in accordance with subsection (b) of this section.

[COM. SUB. FOR S. B. NO. 393]

1 **§49-4-719. Juvenile probation officers; appointment; salary;**
2 **facilities; expenses; duties; powers.**

3 (a) (1) Each circuit court, subject to the approval of the
4 Supreme Court of Appeals and in accordance with the rules of
5 the Supreme Court of Appeals, shall appoint one or more
6 juvenile probation officers and clerical assistants for the circuit.
7 A probation officer or clerical assistant may not be related by
8 blood or marriage to the appointing judge.

9 (2) The salary for juvenile probation officers and clerical
10 assistants shall be determined and fixed by the Supreme Court of
11 Appeals. All expenses and costs incurred by the juvenile
12 probation officers and their staff shall be paid by the Supreme
13 Court of Appeals in accordance with its rules. The county
14 commission of each county shall provide adequate office
15 facilities for juvenile probation officers and their staff. All
16 equipment and supplies required by juvenile probation officers
17 and their staff shall be provided by the Supreme Court of
18 Appeals.

[COM. SUB. FOR S. B. NO. 393]

1 (3) A juvenile probation officer may not be considered a
2 law-enforcement official under this chapter.

3 (b) The clerk of a court shall notify, if practicable, the
4 chief probation officer of the county, or his or her designee,
5 when a juvenile is brought before the court or judge for
6 proceedings under this article. When notified, or if the probation
7 officer otherwise obtains knowledge of such fact, he or she or
8 one of his or her assistants shall:

9 (1) Make investigation of the case; and

10 (2) Furnish information and assistance that the court or
11 judge may require.

12 (c) (1) The Supreme Court of Appeals may develop a
13 system of community-based juvenile probation sanctions and
14 incentives to be used by probation officers in response to
15 violations of terms and conditions of probation and to award
16 incentives for positive behavior.

17 (2) The community-based juvenile probation sanctions
18 and incentives may consist of a continuum of responses from the

[COM. SUB. FOR S. B. NO. 393]

1 least restrictive to the most restrictive, designed to respond
2 swiftly, proportionally and consistently to violations of the terms
3 and conditions of probation and to reward compliance therewith.

4 (3) The purpose of community-based juvenile probation
5 sanctions and incentives is to reduce the amount of resources and
6 time spent by the court addressing probation violations, to
7 reduce the likelihood of a new status or delinquent act, and to
8 encourage and reward positive behavior by the juvenile on
9 probation prior to any attempt to place a juvenile in an
10 out-of-home placement.

11 **§49-4-724. Standardized risk and needs assessment.**

12 _____(a) The Supreme Court of Appeals is requested to adopt
13 a risk and needs assessment to be used for juvenile dispositions.
14 A validation study of the risk and needs assessment may be
15 conducted at least every three years to ensure that the risk and
16 needs assessment is predictive of the risk of reoffending.

17 (b) Each juvenile adjudicated for a status or delinquency
18 offense in accordance with this chapter shall undergo a risk and

[COM. SUB. FOR S. B. NO. 393]

1 needs assessment prior to disposition to identify specific factors
2 that predict a juvenile's likelihood of reoffending and, when
3 appropriately addressed, may reduce the likelihood of
4 reoffending. The risk and needs assessment may be conducted
5 by a probation officer, other court official or the state department
6 worker trained to conduct the risk and needs assessment.

7 (c) Each multidisciplinary team convened pursuant to
8 section four hundred six, article four of this chapter shall receive
9 and consider the results of the risk and needs assessment of the
10 juvenile.

11 (d) The results of the risk and needs assessment shall be
12 provided to the court prior to disposition or at the time of the
13 dispositional hearing.

14 **§49-4-725. Restorative justice programs.**

15 (a) The court or prosecuting attorney may divert a
16 juvenile referred to the court for a status offense or for a
17 nonviolent misdemeanor offense to a restorative justice program,
18 where available, prior to adjudication.

[COM. SUB. FOR S. B. NO. 393]

1 (b) A restorative justice program shall:

2 (1) Emphasize repairing the harm against the victim and
3 the community caused by the juvenile;

4 (2) Include victim-offender dialogues or family group
5 conferencing attended voluntarily by the victim, the juvenile
6 offender, a facilitator, a victim advocate, community members,
7 or supporters of the victim or the juvenile offender that provide
8 an opportunity for the offender to accept responsibility for the
9 harm caused to those affected by the crime and to participate in
10 setting consequences to repair the harm; and

11 (3) Implement sanctions for the juvenile, including, but
12 not limited to, restitution to the victim, restitution to the
13 community, services for the victim or the community, or any
14 other sanction intended to provide restitution to the victim or the
15 community.

16 (c) If a juvenile is referred to, and successfully
17 completes, a restorative justice program, the petition against the
18 juvenile shall be dismissed.

[COM. SUB. FOR S. B. NO. 393]

1 (d) No information obtained as the result of a restorative
2 justice program is admissible in a subsequent proceeding under
3 this article.

4 **ARTICLE 5. RECORDKEEPING AND DATABASE.**

5 **§49-5-103. Confidentiality of juvenile records; permissible**
6 **disclosures; penalties; damages.**

7 (a) Any findings or orders of the court in a juvenile
8 proceeding shall be known as the juvenile record and shall be
9 maintained by the clerk of the court.

10 (b) Records of a juvenile proceeding conducted under
11 this chapter are not public records and shall not be disclosed to
12 anyone unless disclosure is otherwise authorized by this section.

13 (c) Notwithstanding the provisions of subsection ~~(a)~~ (b)
14 of this section, a copy of a juvenile's records shall automatically
15 be disclosed to certain school officials, subject to the following
16 terms and conditions:

17 (1) Only the records of certain juveniles shall be
18 disclosed. These include, and are limited to, cases in which:

[COM. SUB. FOR S. B. NO. 393]

1 (A) The juvenile has been charged with an offense
2 which:

3 (i) Involves violence against another person;

4 (ii) Involves possession of a dangerous or deadly
5 weapon; or

6 (iii) Involves possession or delivery of a controlled
7 substance as that term is defined in section one hundred one,
8 article one, chapter sixty-a of this code; and

9 (B) The juvenile's case has proceeded to a point where
10 one or more of the following has occurred:

11 (i) A circuit court judge or magistrate has determined that
12 there is probable cause to believe that the juvenile committed the
13 offense as charged;

14 (ii) A circuit court judge or magistrate has placed the
15 juvenile on probation for the offense;

16 (iii) A circuit court judge or magistrate has placed the
17 juvenile into a preadjudicatory community supervision period in
18 accordance with section seven hundred eight, article four of this

[COM. SUB. FOR S. B. NO. 393]

1 chapter; or

2 (iv) Some other type of disposition has been made of the
3 case other than dismissal.

4 (2) The circuit court for each judicial circuit in West
5 Virginia shall designate one person to supervise the disclosure
6 of juvenile records to certain school officials.

7 (3) If the juvenile attends a West Virginia public school,
8 the person designated by the circuit court shall automatically
9 disclose all records of the juvenile's case to the county
10 superintendent of schools in the county in which the juvenile
11 attends school and to the principal of the school which the
12 juvenile attends, subject to the following:

13 (A) At a minimum, the records shall disclose the
14 following information:

15 (i) Copies of the arrest report;

16 (ii) Copies of all investigations;

17 (iii) Copies of any psychological test results and any
18 mental health records;

[COM. SUB. FOR S. B. NO. 393]

1 (iv) Copies of any evaluation reports for probation or
2 facility placement; and

3 (v) Any other material that would alert the school to
4 potential danger that the juvenile may pose to himself, herself or
5 others;

6 (B) The disclosure of the juvenile's psychological test
7 results and any mental health records shall only be made in
8 accordance with subdivision (14) of this subsection;

9 (C) If the disclosure of any record to be automatically
10 disclosed under this section is restricted in its disclosure by the
11 Health Insurance Portability and Accountability Act of 1996, PL
12 104-191, and any amendments and regulations under the act, the
13 person designated by the circuit court shall provide the
14 superintendent and principal any notice of the existence of the
15 record that is permissible under the act and, if applicable, any
16 action that is required to obtain the record; and

17 (D) When multiple disclosures are required by this
18 subsection, the person designated by the circuit court is required

[COM. SUB. FOR S. B. NO. 393]

1 to disclose only material in the juvenile record that had not
2 previously been disclosed to the county superintendent and the
3 principal of the school which the juvenile attends.

4 (4) If the juvenile attends a private school in West
5 Virginia, the person designated by the circuit court shall
6 determine the identity of the highest ranking person at that
7 school and shall automatically disclose all records of a juvenile's
8 case to that person.

9 (5) If the juvenile does not attend school at the time the
10 juvenile's case is pending, the person designated by the circuit
11 court may not transmit the juvenile's records to any school.
12 However, the person designated by the circuit court shall
13 transmit the juvenile's records to any school in West Virginia
14 which the juvenile subsequently attends.

15 (6) The person designated by the circuit court may not
16 automatically transmit juvenile records to a school which is not
17 located in West Virginia. Instead, the person designated by the
18 circuit court shall contact the out-of-state school, inform it that

[COM. SUB. FOR S. B. NO. 393]

1 juvenile records exist and make an inquiry regarding whether the
2 laws of that state permit the disclosure of juvenile records. If so,
3 the person designated by the circuit court shall consult with the
4 circuit judge who presided over the case to determine whether
5 the juvenile records should be disclosed to the out-of-state
6 school. The circuit judge has discretion in determining whether
7 to disclose the juvenile records and shall consider whether the
8 other state's law regarding disclosure provides for sufficient
9 confidentiality of juvenile records, using this section as a guide.
10 If the circuit judge orders the juvenile records to be disclosed,
11 they shall be disclosed in accordance with subdivision (7) of this
12 subsection.

13 (7) The person designated by the circuit court shall
14 transmit the juvenile's records to the appropriate school official
15 under cover of a letter emphasizing the confidentiality of those
16 records and directing the official to consult this section of the
17 code. A copy of this section of the code shall be transmitted
18 with the juvenile's records and cover letter.

[COM. SUB. FOR S. B. NO. 393]

1 (8) Juvenile records are absolutely confidential by the
2 school official to whom they are transmitted and nothing
3 contained within the juvenile's records may be noted on the
4 juvenile's permanent educational record. The juvenile records
5 are to be maintained in a secure location and are not to be copied
6 under any circumstances. However, the principal of a school to
7 whom the records are transmitted shall have the duty to disclose
8 the contents of those records to any teacher who teaches a class
9 in which the subject juvenile is enrolled and to the regular driver
10 of a school bus in which the subject juvenile is regularly
11 transported to or from school, except that the disclosure of the
12 juvenile's psychological test results and any mental health
13 records may only be made in accordance with subdivision (14)
14 of this subsection. Furthermore, any school official to whom the
15 juvenile's records are transmitted may disclose the contents of
16 those records to any adult within the school system who, in the
17 discretion of the school official, has the need to be aware of the
18 contents of those records.

[COM. SUB. FOR S. B. NO. 393]

1 (9) If for any reason a juvenile ceases to attend a school
2 which possesses that juvenile's records, the appropriate official
3 at that school shall seal the records and return them to the circuit
4 court which sent them to that school. If the juvenile has changed
5 schools for any reason, the former school shall inform the circuit
6 court of the name and location of the new school which the
7 juvenile attends or will be attending. If the new school is located
8 within West Virginia, the person designated by the circuit court
9 shall forward the juvenile's records to the juvenile's new school
10 in the same manner as provided in subdivision (7) of this
11 subsection. If the new school is not located within West
12 Virginia, the person designated by the circuit court shall handle
13 the juvenile records in accordance with subdivision (6) of this
14 subsection.

15 If the juvenile has been found not guilty of an offense for
16 which records were previously forwarded to the juvenile's
17 school on the basis of a finding of probable cause, the circuit
18 court may not forward those records to the juvenile's new

[COM. SUB. FOR S. B. NO. 393]

1 school. However, this does not affect records related to other
2 prior or future offenses. If the juvenile has graduated or quit
3 school or will otherwise not be attending another school, the
4 circuit court shall retain the juvenile's records and handle them
5 as otherwise provided in this article.

6 (10) Under no circumstances may one school transmit a
7 juvenile's records to another school.

8 (11) Under no circumstances may juvenile records be
9 automatically transmitted to a college, university or other
10 post-secondary school.

11 (12) No one may suffer any penalty, civil or criminal, for
12 accidentally or negligently attributing certain juvenile records to
13 the wrong person. However, that person has the affirmative duty
14 to promptly correct any mistake that he or she has made in
15 disclosing juvenile records when the mistake is brought to his or
16 her attention. A person who intentionally attributes false
17 information to a certain person shall be subjected to both
18 criminal and civil penalties in accordance with subsection (e) of

[COM. SUB. FOR S. B. NO. 393]

1 this section.

2 (13) If a circuit judge or magistrate has determined that
3 there is probable cause to believe that a juvenile has committed
4 an offense but there has been no final adjudication of the charge,
5 the records which are transmitted by the circuit court shall be
6 accompanied by a notice which clearly states in bold print that
7 there has been no determination of delinquency and that our
8 legal system requires a presumption of innocence.

9 (14) The county superintendent shall designate the school
10 psychologist or psychologists to receive the juvenile's
11 psychological test results and any mental health records. The
12 psychologist designated shall review the juvenile's
13 psychological test results and any mental health records and, in
14 the psychologist's professional judgment, may disclose to the
15 principal of the school that the juvenile attends and other school
16 employees who would have a need to know the psychological
17 test results, mental health records and any behavior that may
18 trigger violence or other disruptive behavior by the juvenile.

[COM. SUB. FOR S. B. NO. 393]

1 Other school employees include, but are not limited to, any
2 teacher who teaches a class in which the subject juvenile is
3 enrolled and the regular driver of a school bus in which the
4 subject juvenile is regularly transported to or from school.

5 ~~(c)~~ (d) Notwithstanding the provisions of subsection ~~(a)~~
6 (b) of this section, juvenile records may be disclosed, subject to
7 the following terms and conditions:

8 (1) If a juvenile case is transferred to the criminal
9 jurisdiction of the circuit court pursuant to the provisions of
10 subsection (c) or (d), section seven hundred ten, article four of
11 this chapter, the juvenile records are open to public inspection.

12 (2) If a juvenile case is transferred to the criminal
13 jurisdiction of the circuit court pursuant to the provisions of
14 subsection (e), (f) or (g), section seven hundred ten, article four
15 of this chapter, the juvenile records are open to public inspection
16 only if the juvenile fails to file a timely appeal of the transfer
17 order or the Supreme Court of Appeals refuses to hear or denies
18 an appeal which has been timely filed.

[COM. SUB. FOR S. B. NO. 393]

1 (3) If a juvenile is fourteen years of age or older and a
2 court has determined there is a probable cause to believe the
3 juvenile committed an offense set forth in subsection (g), section
4 seven hundred ten, article four of this chapter, but the case is not
5 transferred to criminal jurisdiction, the juvenile records are open
6 to public inspection pending trial only if the juvenile is released
7 on bond and no longer detained or adjudicated delinquent of the
8 offense.

9 (4) If a juvenile is younger than fourteen years of age and
10 a court has determined there is probable cause to believe that the
11 juvenile committed the crime of murder under section one, two
12 or three, article two, chapter sixty-one of this code, or the crime
13 of sexual assault in the first degree under section three, article
14 eight-b of chapter sixty-one, but the case is not transferred to
15 criminal jurisdiction, the juvenile records shall be open to public
16 inspection pending trial only if the juvenile is released on bond
17 and no longer detained or adjudicated delinquent of the offense.

18 (5) Upon a written petition and pursuant to a written

[COM. SUB. FOR S. B. NO. 393]

1 order, the circuit court may permit disclosure of juvenile records
2 to:

3 (A) A court, in this state or another state, which has
4 juvenile jurisdiction and has the juvenile before it in a juvenile
5 proceeding;

6 (B) A court, in this state or another state, exercising
7 criminal jurisdiction over the juvenile which requests records for
8 the purpose of a presentence report or disposition proceeding;

9 (C) The juvenile, the juvenile's parents or legal guardian,
10 or the juvenile's counsel;

11 (D) The officials of a public institution to which the
12 juvenile is committed if they require those records for transfer,
13 parole or discharge; or

14 (E) A person who is conducting research. However,
15 juvenile records may be disclosed for research purposes only
16 upon the condition that information which would identify the
17 subject juvenile or the juvenile's family may not be disclosed.

18 (6) Notwithstanding any other provision of this code,

[COM. SUB. FOR S. B. NO. 393]

1 juvenile records shall be disclosed, or copies made available, to
2 a probation officer upon his or her request. Any probation
3 officer may access relevant juvenile case information contained
4 in any electronic database maintained by or for the Supreme
5 Court of Appeals and share it with any other probation officer.

6 (7) Notwithstanding any other provision of this code,
7 juvenile records shall be disclosed, or copies made available, in
8 response to any lawfully issued subpoena from a federal court or
9 federal agency.

10 (8) Notwithstanding any other provision of this code,
11 juvenile records shall be disclosed, or copies made available, to
12 the department or the Division of Juvenile Services for purposes
13 of case planning for the juvenile and his or her parents,
14 custodians or guardians.

15 ~~(d)~~ (e) Any records open to public inspection pursuant to
16 this section are subject to the same requirements governing the
17 disclosure of adult criminal records.

18 ~~(e)~~ (f) Any person who willfully violates this section is

[COM. SUB. FOR S. B. NO. 393]

1 guilty of a misdemeanor and, upon conviction, shall be fined not
2 more than \$1,000, or confined in jail for not more than six
3 months, or both fined and confined. A person who violates this
4 section is also liable for damages in the amount of \$300 or actual
5 damages, whichever is greater.

6 **§49-5-106. Data collection.**

7 (a) The Division of Juvenile Services, the department and
8 the Supreme Court of Appeals shall establish procedures to
9 jointly collect and compile data necessary to calculate juvenile
10 recidivism and the outcome of programs.

11 (b) For each juvenile who enters into a diversion
12 agreement, is placed on an improvement period, is placed on
13 probation or is placed in an out-of-home placement as defined by
14 section two hundred six, article one of this chapter, the data and
15 procedures developed in subsection (a) shall include:

16 (1) New offense referrals to juvenile court or criminal
17 court within three years of completion of the diversion
18 agreement, release from court jurisdiction or release from agency

[COM. SUB. FOR S. B. NO. 393]

1 custody;

2 (2) Adjudications for a delinquent or status offense by a
3 juvenile or a conviction by a criminal court within three years of
4 completion of the diversion agreement, release from court
5 jurisdiction or release from agency custody;

6 (3) Commitments to the Division of Juvenile Services,
7 the department, excluding out-of-home placements made for
8 child welfare or abuse and neglect purposes, or incarceration
9 with the Division of Corrections within three years of
10 completion of the diversion agreement, release from court
11 jurisdiction or release from agency custody; and

12 (4) The number of out-of-home placements ordered
13 where the judge found by clear and convincing evidence the
14 existence of a significant and likely risk of harm to the juvenile,
15 a family member or the public.

16 (c) For youth placed in programs operated or funded by
17 the Division of Juvenile Services, the department or the Supreme
18 Court of Appeals, including youth reporting centers, juvenile

[COM. SUB. FOR S. B. NO. 393]

1 drug courts, restorative justice programs and teen courts, the
2 division, department and Supreme Court shall develop
3 procedures using, at a minimum, the measures in subsection (b)
4 of this section to track and record outcomes of each program,
5 and to demonstrate that the program reduces the likelihood of
6 reoffending for the youth referred to the program.

7 (d) For youth referred to truancy diversion specialists or
8 other truancy diversion programs operated or funded by the
9 Supreme Court of Appeals, the Division of Juvenile Services, the
10 Department of Health and Human Resources, the Department of
11 Education or other political subdivisions, that branch of
12 government or agency shall develop procedures to track and
13 record outcomes of each program, and to evaluate the
14 effectiveness in reducing unexcused absences for the youth
15 referred to the program. At a minimum, this outcome data shall
16 include:

17 (1) The number of youth successfully completing the
18 truancy diversion program;

[COM. SUB. FOR S. B. NO. 393]

1 (2) The number of youth who are referred to the court
2 system after failing to complete a truancy diversion program;
3 and

4 (3) The number of youth who, after successfully
5 completing a truancy diversion program, accumulate five or
6 more unexcused absences in the current or subsequent school
7 year.

8 (e) The Supreme Court of Appeals, the Division of
9 Juvenile Services, the Department of Health and Human
10 Resources and the Department of Education shall also establish
11 procedures to jointly collect and compile data relating to
12 disproportionate minority contact, which is defined as the
13 proportion of minority youth who come into contact with the
14 juvenile justice system in relation to the proportion of minority
15 youth in the general population, and the compilation shall
16 include data indicating the prevalence of such disproportionality
17 in each county. Data shall include, at a minimum, the race and
18 gender of youth arrested or referred to court, entered into a

[COM. SUB. FOR S. B. NO. 393]

1 diversion program, adjudicated and disposed.